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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/517,507	06/28/2005	Heiner Messner	10191/36-44	1286
26646 7590 04/28/2008 KENYON & KENYON LLP ONE BROADWAY NEW YORK, NY 10004				
EXAMINER				
WEISKOPF, MARIE				
ART UNIT		PAPER NUMBER		
3664				
MAIL DATE		DELIVERY MODE		
04/28/2008		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

**Application No.**

10/517,507

**Applicant(s)**

MESSNER ET AL.

**Examiner**

MARIE A. WEISKOPF

**Art Unit**

3664

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 10 December 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 14-26 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 14-26 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12/10/07 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-8508)
- Paper No(s)/Mail Date 12/10/04.
- 4) ☐ Interview Summary (PTO-413)
- Paper No(s)/Mail Date \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 14-19 and 26 are rejected under 35 U.S.C. 102(b) as being anticipated by Kato et al (US 5,647,647).

- In regard to claims 14 and 26, Kato et al discloses a method for setting a desired longitudinal deceleration or longitudinal acceleration in a vehicle, comprising setting the desired longitudinal deceleration or longitudinal acceleration using a first mode at vehicle longitudinal speeds above a limiting value and setting the desired longitudinal deceleration or longitudinal acceleration using a second mode at vehicle longitudinal speeds below the limiting value. (Column 4, lines 10-31)
- In regard to claim 15, wherein the first mode includes establishing, on the basis of a wheel speed of at least one wheel, one of an actual longitudinal deceleration or an actual longitudinal acceleration and varying the at least one of the actual longitudinal deceleration or longitudinal acceleration until it corresponds to a desired longitudinal deceleration or a desired longitudinal acceleration, respectively. (Column 4, lines 42-56)

- In regard to claim 16, wherein the second mode a desired longitudinal deceleration is set by establishing a setpoint brake pressure for at least one wheel brake cylinder and setting the desired longitudinal deceleration based on the established setpoint brake pressure. (Column 4, lines 10-31)
- In regard to claim 17, wherein the establishing of the desired longitudinal deceleration further comprises establishing an actual brake pressure of the at least one wheel brake cylinder and varying the actual brake pressure until the actual brake pressure corresponds to the setpoint brake pressure. (Column 4, line 57 - Column 5, line 5)
- In regard to claim 18, wherein the setpoint brake pressure is established from information and at least one part of the information is established in an operating state of the vehicle in which the vehicle longitudinal speed is greater than the limiting value. (Column 4, line 10 – Column 5, line 5)
- In regard to claim 19, wherein during the operating state of the vehicle in which the vehicle longitudinal speed is greater than the limiting value, an actual longitudinal deceleration and the actual brake pressure are detected at least at one point in time, and in the operating state, the setpoint brake pressure is established on the basis of the detected actual longitudinal deceleration, the actual brake pressure and the desired longitudinal deceleration. (Column 4, lines 10 - Column 5, line 5)

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 20-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kato et al in view of Yano et al (US 6,282,483). Kato et al fails to disclose specifically the inclination of a road surface, however, Yano et al discloses this in order to help determine how to accelerate or decelerate the vehicle. (Column 21, lines 40-49) Further, Kato et al fails to specifically disclose being able to establish a setpoint engine torque and setting the acceleration based upon the engine torque, however, this is also taught by Yano et al (Column 22, lines 33-55). It would have been obvious to one having ordinary skill in the art at the time of the invention to include the inclination of the road surface and the engine torque as taught by Yano et al with the invention of Kato et al since these are well known in the art and would allow the vehicle to accelerate or decelerate to the desired speed more accurately.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MARIE A. WEISKOPF whose telephone number is (571)272-6288. The examiner can normally be reached on Monday-Thursday between 7:00 AM and 5:30 PM.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Khoi Tran can be reached on (571) 272-6919. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

MW

/Khoi H Tran/

Supervisory Patent Examiner, Art Unit 3664